

CARLYLE A. BROUGH

IBLA 82-1257

Decided November 19, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 30218.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim

is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Carlyle A. Brough pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Carlyle A. Brough appeals the July 20, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Big Ernie lode mining claim, I MC 30218, abandoned and void because no notice of intention to hold the claim or evidence of assessment work had been filed with BLM during 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The claim was located September 2, 1959. Initial recordation under FLPMA of the notice of location and evidence of assessment work was done on October 11, 1979.

Appellant asserts that he had been transferred to a new duty station and in the process of moving, his claim papers were lost. When he discovered the loss, it was too late to obtain new copies of the proof of labor from Lemhi County, Idaho, where it had been recorded. Copies of labor for 1981 and 1982 accompanied the appeal.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located prior to October 21, 1976, in addition to filing with BLM a copy of the notice of location, to file with BLM a copy of evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements and consequences are replicated in 43 CFR 3833.2-1 and 3833.4.

[2, 3] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. Such filing must be made in both the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment of recording in the proper county of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the owner of the claim from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. J. Barry Van Hoogen, 65 IBLA 175 (1982); W. A. Shepherd, 65 IBLA 72 (1982); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner, and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra. As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

52 IBLA at 196, 88 I.D. at 371-72.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

